

**TESTIMONY OF
THOMAS SILVERMAN
Tommy Boy Entertainment**

**Hearing
of the
HOUSE COMMITTEE ON SMALL BUSINESS
“Assessing the Impact of the Copyright Royalty Board
Decision to Increase Royalty Rates on
Recording Artists and Webcasters”**

June 28, 2007

Good morning. Thank you, Madam Chairman and members of the committee. My name is Tom Silverman, but I am also known as “Tommy Boy” and the owner and CEO of Tommy Boy Entertainment. I do appreciate this opportunity to testify before you today.

I come from the world of hip-hop, the world of gold and platinum records, the world of Planet Rock by Afrika Bambaataa and the Soul Sonic Force, the world of Queen Latifah, and Naughty by Nature.

But I also come from a world very familiar to members of this committee – the world of business – of meeting payrolls, paying taxes and having hundreds of people dependent on the viability of my business enterprises.

And it is as a businessman that I appear before you today.

It is the business of music – a vast industry that, in step with extraordinary changes in technology, is itself changing dramatically. Long gone are the days of vinyl records that were prevalent when I started out with a \$5,000 loan from my father in my cramped New York City apartment.

Today there are many ways in which people get their music, including Internet radio, satellite radio and other digital formats. Almost by the day, new technology and business arrangements are appearing that continue to dramatically alter people’s music-listening habits and preferences. On balance, I think this is all good. Access and exposure to all kinds of music are being broadened, and new opportunities are opening up for artists and small businesses like Tommy Boy Entertainment.

But, even in this new world of jaw-dropping new technology I have the old-fashioned challenges and responsibilities of any business owner: making a profit; identifying, hiring and nurturing employees; and investing in new artists and new products.

I sometimes sign a new musical artist who does well and flourishes, and my record label makes a profit. I sometimes sign a new musical artist, and they don't do so well. As a result, sales languish, and I lose money.

These days we are increasingly dependent on the royalties due us from the flourishing business of Internet webcasting and satellite radio. These are businesses totally dependent on our work product – the creativity and investment of the record label and the creativity, passion and hard work of recording artists. Without us, these business would not, and could not, exist.

Yet, what we continue to hear from the webcasting business – one where more than 80 percent of the webcasting royalties are paid by 20 large webcasters – is that they want to pay less, not more. I think it is only fair that these large businesses – whose very existence is totally dependent on the work product of record companies, independent labels like Tommy Boy Entertainment, and musical artists – should fairly compensate those whose work they webcast.

As to the fairness of the rates, they were determined by three impartial judges, specifically selected for their knowledge and understanding of this industry, in a hearing process that ran more than 18 months.

It was a fair decision. What irks me as a small business owner, is the attitude expressed by a few small webcasters who became engaged in a grassroots campaign primarily financed by large webcasters. They got people's attention, including some Members of Congress, by claiming small businesses would be hurt. Okay. But what bothers me is that, in all their rhetoric, I never hear anything positive about artists, who themselves are small businesses – or about the challenges facing independent labels. It's all about cutting the rates.

Congress asked SoundExchange to give small webcasters below market royalties – to provide them with a significant discount from the fair market rates set by the Copyright Royalty Judges, to allow their businesses a chance to gain more “steam”. As I understand it, SoundExchange is doing just that. And if SoundExchange tells me it's okay to give this discount and it might help some of these small operators, then that's okay with me because I know that SoundExchange is looking out for our performance rights.

So, while I continue to pay for electricity and employees and all of my other costs at rates that are set by the market, continuing this discount for a limited time seems fair to me. But, that discount offer does not seem to have stopped the push to cut our royalties. I know what that's about. It's about Big Net Radio. Madam Chairman, with all due respect, that's not right.

I was asked to come before you today as a record label owner and entrepreneur with previous successes in the recorded music industry. But I want to be clear that these successes were not pre-ordained and certainly not inevitable. Yes, I worked hard -- but so do a lot of other people in the industry. I have tried to assist other small businessmen and

women over the years. In the 1980's, I created the New Music Seminar which was the leading conference of its time that tried to educate new entrepreneurs, lawyers, agents, managers and artists on how to best navigate this difficult business.

Over the years I have been lucky to “discover” influential groups like De La Soul and Queen Latifah. I invest in new sounds, but so do a lot of others. I constantly re-invest my money to try to build my business. So do others. Many in my industry have failed. No small business is guaranteed success.

I happened to strike on some successes, but many of us do not make it big in this highly competitive industry. Many scrimp and save and sacrifice to make ends meet as they devote their lives to this business they love: making music that others enjoy. And I do hope that as you consider this situation that you will keep in mind the many hundreds of thousands of musical artists, and the thousands of record label owners, who are small business people – sometimes extremely small. I serve on the Board and was a founding member of A2IM, a new association that represents many of America's leading independent labels. Of our 130 members, 90 have market share of less than two tenths of one percent, which mean they gross \$1.4 Million dollars or less from the sales of their product. From this gross, one must deduct artist royalties, publishing royalties, the cost of physical goods (if in physical form and not a digital download), and many other costs – marketing, advertising, artist advances and more. Our businesses are very different from webcasters, some of which simply pay a service a small fee per month, plug in their computer and stream.

The income for artists and copyright owners from music royalties – being paid for the use of their products – is a critically important factor in whether we can afford to keep going and create the music that so very many of us enjoy and love. It's all about fairness, and being paid for the work we do.

Thank you very much, and I look forward to your questions.

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